

### REMARKS

Claims 12-21 were pending in this application. Claim 20 has been amended to correct the punctuation. The Examiner acknowledges that claims 13-16 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. New claim 22 has been added, which incorporates the limitations of allowed claim 14. Accordingly, claim 14 has been cancelled. Accordingly, claims 12-22 are pending in this application.

#### Specification Objection

The Examiner object to the Abstract because he asserts that there is no mention of an apparatus. Applicant respectfully disagrees because the last sentence of the Abstract (submitted with the Preliminary Amendment filed with the application) refers to the incubator apparatus. Accordingly, Applicant respectfully requests that the Abstract objection be withdrawn.

#### 35 U.S.C. §102 and §103 Rejections

Claim 12 stands rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 1,524,129 to Grossman and, in the alternative, to U.S. Patent No. 1,460,349 to Oakes. Claims 17-21 stand rejected for obviousness under 35 U.S.C. §103(a) under the Oakes patent.

Applicant's claims are method claims that recite the positive step of performing a disinfecting heat treatment by using temperature regulating means.

The Grossman patent, issued in 1923, discloses a temperature regulator which may be used in an incubator and is intended for maintaining an even temperature (*See* line 12). There is no disclosure in the Grossman patent relating to a step of disinfecting the incubator, let alone using the temperature regulator for disinfecting the incubator. The Oakes patent, issued in 1920, discloses an electric incubator used to hatch eggs and keep chicks warm. The specification indicates that the temperature should be maintained at a uniform degree (*See* column 1, lines 18-23). There is no disclosure in the Grossman patent relating to a step of disinfecting the incubator, let alone using the temperature regulator for disinfecting

the incubator. Accordingly, the limitations of claim 12 are not met by the disclosure of the prior art of record.

The Examiner makes reference to cleaning an incubator (only recited in the preamble of claim 12), even though claim 12 relates to *disinfecting* the incubator by using heat treatment. In any case, none of the prior art of record, either alone or in combination, refers to a process for using temperature regulating means of an incubator for disinfecting it or, specifically, disinfecting it using heat treatment.

With respect to the obviousness rejection of apparatus claims 18-21, Applicant notes that when interpreting the patentability of a claim, the law requires that a reference be considered for all of its teachings, including disclosure that diverges and teaches away from the invention at hand as well as disclosures that point toward and teach the invention. (*In re Dow Chem. Co.*, 837 F.2d 469, 5 USPQ2d 1529 (Fed. Cir. 1988)). (*emphasis added*) As discussed above, the Oakes patent specifically states that the temperature should be maintained at a uniform degree. Accordingly, the disclosure of the Oakes patent teaches away from the aspect of applying a heat treatment for purposes of disinfecting, let alone maintaining a temperature above 50°C. Disinfection temperatures are not conducive to hatching eggs. As is known in the art of hatching chicks, the ideal temperature is between 99°F and 102°F. In contrast, the claimed heat treatment temperature of over 50°C translates to at least 122°F. In any case, the Oakes patent fails to disclose, teach, or suggest the heat treatment aspect and the greater than 50°C temperature requirement of the claim.

For the foregoing reasons, Applicant believes that the subject matter of independent claims 12 and 18 are not anticipated or rendered obvious by the Grossman or Oakes patent. Reconsideration of the rejections of independent claims 12 and 18 and the previously non-allowed claims depending therefrom is respectfully requested.

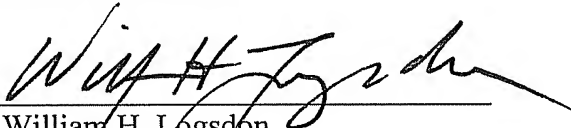
As indicated in the previously submitted Information Disclosure Statement, Applicant is unable to procure English-language equivalents for FR 954964 and DE 888329 (which were both cited in the International Search Report) due to the age of these references. However, Applicant would like to note that FR 954964 relates to an incubator having an interior of asbestos cement, which makes it possible to disinfect the incubator by using flames (See #6 in the specification in which the term "brulage" is used, meaning, "burning off"). DE 888329 discloses an incubator having an air heating system. Hot air can pass through a liquid bath having a cleaning liquid. Applicant respectfully requests the Examiner reconsider

submission of these references. In any case, none of this prior art discloses the aspect of disinfecting the incubator.

**CONCLUSION**

Based on the foregoing amendments and remarks, continued allowance of claims 13 and 14 (now new independent claim 22) and reconsideration of the rejections and allowance of pending claims 12 and 17-21 are respectfully requested.

Respectfully submitted,  
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